

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 2**

**ADDISON WESLEY LONGMAN, INC.,  
A SUBSIDIARY OF PEARSON, PLC.  
Employer**

**and**

**Case No. 2-UC-526**

**LOCAL 2110, UNITED AUTOMOBILE  
AEROSPACE AND AGRICULTURAL  
IMPLEMENT WORKERS OF AMERICA, AFL-CIO  
Petitioner**

**DECISION AND CLARIFICATION OF BARGAINING UNIT**

Upon a petition duly filed under Section 9(c) of the Act, as amended, a hearing was held before Leah Jaffe, a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director, Region 2.

Upon the entire record in this proceeding it is found that:<sup>1</sup>

1. The Hearing Officer's rulings are free from prejudicial error and hereby are affirmed.

2. The parties stipulated, the record reflects, and I find that Addison Wesley Longman, Inc., a subsidiary of Pearson, PLC, ("the Employer" or "AWL"), is a Massachusetts corporation with a principal office in Reading, Massachusetts and a facility at 1185 Avenue of the Americas, in New York, New York, the only facility involved herein, engaged in educational publishing. Annually, in the course and conduct of its business operations, the Employer purchases and receives at its facility in New York, New York goods and supplies valued in excess of \$50,000 directly from suppliers

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<sup>1</sup> Briefs were filed by the parties and have been duly considered.

located outside the State of New York. Based upon the record and the stipulation of the parties, I find the Employer is engaged in commerce with the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties further stipulated and I find, that the Local 2110, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO, ("the Petitioner" or "the Union"), is a labor organization within the meaning of Section 2(5) of the Act. The Union represents certain employees of the Employer.

4. This petition seeks clarification of the following six positions: associate marketing manager, associate development editor, full-service production manager, design manager, cover design manager and project manager.<sup>2</sup> As will be set forth in detail below, the issues are whether, as the Employer contends, these positions are managerial within the meaning of *Bell Aerospace*, 416 U.S. 267 (1974), or administrative positions, expressly excluded by the collective-bargaining agreement or whether, as the Union contends, these are unit positions. The parties have stipulated that none of the positions in issue are supervisory within the meaning of Section 2(11) of the Act. Another issue raised by the Employer is whether four of the positions in dispute<sup>3</sup>, associate marketing manager, associate development editor and full service production manager, were in existence in January of 1997, and accordingly whether the unit clarification petition is untimely and should be dismissed.<sup>4</sup>

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<sup>2</sup> Originally, the petition also sought clarification of three additional positions: pre-press services supervisor, manufacturing and advertising specialist. During the hearing, for reasons that are explained in the record, but are not pertinent herein, petitioner moved to amend the petition to remove these three positions from consideration. That motion was unopposed and the amendment to the petition was received.

<sup>3</sup> The Employer's initial motion to dismiss only included the full service production manager, associate development editor and associate marketing manager positions. It added the design manager position to its motion to dismiss, in its post hearing brief.

<sup>4</sup> In a January 27, 1999, letter to the hearing officer, the Employer moved for dismissal of the petition with respect to the associate development manager, full service manager and associate marketing manager positions. The Union opposed the motion by letter dated January 29, 1999, and the matter was referred to the Acting Regional Director, who by

The Employer produces books and media products for educational institutions. In April of 1996, the Employer acquired the text book division of Harper Collins, which was located in New York City and incorporated it within its own higher education group. Although AWL's higher education group is headquartered in Reading, Massachusetts and maintains facilities in Menlo Park, California, it retained the New York City location acquired from Harper Collins. The higher education group is lead by the President of higher education. Each of the locations, New York, Reading, and Menlo Park are operated by respective general managers and their staffs.

In New York City, the higher education group is divided into three departments, editorial, production and marketing. The editorial department is headed by an Editorial Vice President and Director and is organized along disciplinary lines. The editorial department is responsible for acquiring manuscripts and working with the authors to create a marketable product. It is the production department, headed by a director of production, to whom four of five managers report directly, that prepares the manuscript to become printed material. The marketing department, responsible for ensuring that the Employer's list is saleable, is headed by a marketing director to whom several marketing managers report.

At the time AWL acquired the New York City text book operation from Harper Collins, the latter and the Union were in mid term of a three-year collective-bargaining agreement, with the Union, ("the collective-bargaining agreement"), a product of a long-term, stable collective-bargaining relationship between the Union and AWL's predecessors. The collective-bargaining agreement, which was in effect from January 1, 1994 through December 31, 1997, covered a unit of employees, employed by Harper Collins in New York City, which included but was not limited to the textbook division

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letter dated February 5, 1999, deferred ruling on the motion pending the development of a complete record.

acquired by AWL,<sup>5</sup> in classifications listed in an approximately 16-page addendum to the collective-bargaining agreement, referred to in the collective-bargaining agreement and herein as "Appendix A". The bargaining unit description contained in the collective-bargaining agreement and which was substantially unchanged by the MOA, specifically excludes executive, administrative or supervisory employees, the secretaries to corporate officers, the heads of major departments and persons employed by the human resources department. At the time of hearing, the bargaining unit included about 32 or 33 individuals employed in the three departments of the AWL New York City higher education group.

When AWL acquired the college textbook operations from Harper Collins, it assumed the collective-bargaining agreement. Between December 1996 and March 1997, AWL and the Union negotiated for a successor agreement, which resulted in a Memorandum of Understanding, ("the MOA"), which was effective from January 1, 1997, through December 31, 1998. The MOA made certain specified changes in the expired collective bargaining agreement, but otherwise left the expired agreement in tact. The MOA did not alter Appendix A. Neither the term "executive" employee nor "administrative" employee is defined in the collective-bargaining agreement as modified by the MOA. Section 2.2. of the collective-bargaining agreement as modified by the MOA requires the Employer to notify the Union in writing of any changes in the content of existing positions or the creation of new positions, that "may be reasonably deemed to affect their inclusion in or exclusion from the bargaining unit." The Section also requires the Employer to promptly submit any revisions to formal job descriptions to the Union.<sup>6</sup>

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<sup>5</sup> In addition to the college text book division, which was acquired by AWL, the bargaining unit included classifications in other divisions retained by Harper Collins after the sale to AWL, including the fiction, nonfiction and trade publishing divisions, as well as at the corporate offices.

<sup>6</sup> Section 1.1.1. is set forth verbatim as follows:

Bernice Krawczyk, who currently works for a local of the Communications Workers of America, was employed by Harper and Row, the predecessor of Harper Collins, between 1970 and 1974 and was a shop steward for District 65, the Union's predecessor, between 1972 and 1974 with responsibility for enforcing the collective-bargaining agreement. Between 1974 and 1984, Krawczyk was a full-time employee of District 65 representing employees at Harper and Row and other publishing companies. Krawczyk testified that the language in Section 1.1.1. concerning administrative and executive employees was encompassed in the collective-bargaining agreement during her tenure as a full-time union representative for Harper and Row employees.<sup>7</sup> She further testified that during her tenure as a representative for the Harper and Row disputes as to which positions were in the unit arose frequently. During these disputes Krawczyk testified the Employer used the terms "executive" and "administrative" interchangeably with "managerial".

The record reflects that during bargaining in 1996-1997, the Employer sought unsuccessfully to remove a substantial number of positions from the bargaining unit. In

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“Bargaining unit” means all employees of the Employer who are based or located in New York City and who are employed in the occupations listed on the Job classification List that is annexed hereto and made a part hereof as “Appendix A.” the bargaining unit does not include and this Agreement does not apply to executive, administrative, or supervisory employees the secretaries to the corporate officers of the Employer or to the heads of major departments, persons employed in the Personnel Department or employees whose employment is temporary.

Section 2.2. provides in pertinent part:

New positions that may hereafter be created by the Employer shall be included in or excluded from the bargaining unit on the basis of the same criteria that were used to establish the bargaining unit. The Employer shall notify the Union in writing of any changes in the content of existing positions, or of the creation of new positions, that may be reasonably deemed to affect their inclusion or exclusion from the bargaining unit. If any existing job descriptions are formally revised, the Employer shall promptly send a copy of the revised job description to the Union.

<sup>7</sup> The language of Section 2.2 with respect to the creation of new positions was also in the collective-bargaining agreement at the time Krawczyk represented the Harper Rowe unit.

evidence is a January 23, 1997, memo from the Employer's counsel to its bargaining team. The memo argued that certain classifications should be excluded from the unit because they fall within the contractual exclusion for executive or administrative employees. The record reflects that Union flatly refused to bargain over these issues.

While negotiations were still in progress, in February 1997, the Employer demanded arbitration on the issue of whether the classifications listed in the January 23 memorandum were properly included in the bargaining unit. At the end of negotiations on March 20, the Employer proposed a side letter to the MOA which indicated the parties agreement to disagree over the composition of Appendix A and stated that by agreeing to the MOA the Employer did not waive its right to pursue the pending grievance on the composition of the bargaining unit. The Union refused to agree to the side letter and the MOA was signed without it.

The Employer's grievance on the placement of the classifications listed in the July 23 memorandum was heard before an arbitrator in May 1997. After two days of hearing the Employer withdrew the grievance for reasons that are unexplained in the record. No award was rendered. The two days of record testimony were received into evidence herein.<sup>8</sup>

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<sup>8</sup> The hearing officer initially rejected Petitioner's offer of the transcript of the May 1997 arbitration. On special appeal to the Regional Director, the two days of arbitration testimony were received on the condition that the Petitioner identify those portions of the transcript on which it intended to rely, which Petitioner did on the record, at a later date. In its brief the Employer argued that the arbitration transcript should be given little or no weight. In support of its position the Employer argues that because the hearing was never completed, a full and complete record of the facts is not available to the Regional Director; the issues and standards at the arbitration differed from the case at bar, and thereby a different kind of record was developed and some witnesses present at the arbitration hearing are no longer employed by AWL. The Employer's position that the arbitration transcript is without probative value is without merit. The parties to the May 1997 arbitration are the same parties to the case at bar. All parties had an opportunity to call, examine and cross examine witnesses, who testified under oath. The arbitration record contains admissions that are admissible under FRE 802(2). Further, there is no evidence, nor does the Employer contend, that it was unable to supplement any

As will be set forth in detail below, during material times, the Employer effected changes in the job content of existing bargaining unit positions and created new positions which incorporated work previously performed by the bargaining unit. Notwithstanding the provisions of Section 2.2.2. of collective-bargaining agreement, the record reflects that the Employer did not provide the Union with written notification of these changes. Nor did the Employer provide the Union with other notice when it made these changes. Lawson testified at the arbitration that the Employer did try to discuss these matters with the Union during bargaining in 1996-1997. However, it is not clear from her testimony whether the Employer sought to provide notice as required by Section 2.2.2. or whether it raised these issues solely in connection with its proposal to remove positions from the bargaining unit.

#### Associate Development Editor

Among the positions as to which the Employer asserts the petition is untimely is the associate development editor. Richard Wohl, Vice President and Editorial Director testified concerning the structure and organization of the editorial department. As head of the editorial department, Wohl reports directly to the General Manager Roth Wilofsky. Reporting directly to Wohl are Carly Priscilla McGeehan, Editor-in Chief of the Social Science Group, the English Acquisitions Editor, the Development Editor for English, the Senior Marketing Developer and the Development Manager.<sup>9</sup> In all, 38 people report to Wohl directly and indirectly. Wohl is given a budget within which he must work.

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deficiencies in the arbitration record at the instant hearing. There is no contention that witnesses were unavailable, or that the Employer could not elicit testimony from other sources. To the extent that the testimony at the arbitration is relevant, it will be considered.

<sup>9</sup> The parties stipulated that the development managers are statutory supervisors.

Wohl testified that the associate development editor position has been in existence since at least January 1997 and has never been in the collective-bargaining unit. Appendix A to the contract lists an associate editor position as a unit position in Group 11,<sup>10</sup> but makes no specific reference to associate development editor.<sup>11</sup> Wohl testified that he did not know whether there was an associate development editor prior to August 1, 1996. Allen McClare, the Executive Editor at the time of the 1997 arbitration, and who supervised associate editors, testified that the associate editor position was created in or about 1995. The associate editor position exists within the acquisitions group and individuals holding this title report directly to the acquisitions editor. Associate editor was among the positions listed in Appendix A that the Employer sought to exclude from the unit during bargaining and then in the July 1997 arbitration.

At the time of the hearing there was only one person in the position of associate development editor, Karen Helfrich, who also testified at the hearing and works in social sciences area reporting directly to Lisa Pinto, the manager for development in social science. At the time of the hearing there were three development editors in that group.

Lisa Jessup, an organizer for the Union, testified as to when she became aware of the creation of the associate development editor position. According to Jessup, she met Karen Helfrich by chance on the Employer's premises in the summer of 1997, at which time Helfrich informed Jessup that she had been promoted to the associate development editor position and that she was therefore no longer in the Union. Until this point, Jessup testified, she had been unaware that the position existed, having never received notice from the Employer as to its creation. Jessup further testified that in March 1996, the Union requested a list of non-bargaining unit positions and the Employer did provide information on certain non-unit positions, but the associate

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<sup>10</sup> The memo of January 23, 1997, referred to an "associate acquisitions editor" position as one appropriate for exclusion because it is administrative. It appears that the Employer has used associate editor and associate acquisitions editor interchangeably.



development editor position was not on the list. Neither party produced the Union's information request, or the Employer's response. Jessup testified that there were shop stewards both at AWL and Harper Collins. However, the shop stewards never reported the creation of the associate development editor position.

Arlene Besenoff, who currently holds the title sponsoring development manager, formerly held the position of development manager in the education group, from June 1996-June 1998 and director of development from January 1995, until June 1996, in the business and economics group. She testified that during the period she was director of development, she managed in house and free lance development editors, including one associate development editor named Vicki Cohen.<sup>12</sup> Besenoff further testified that Ann Kirby and Michael Kimball held the position of associate development editor in March of 1994. All three individuals held the position editorial assistant before being promoted to the position associate development editor.<sup>13</sup>

In general, the career path for associate development editors is to become a development editor and then a senior development editor and ultimately, depending on the individual, a development manager. Helfrich began her career with AWL as an assistant editor, a bargaining unit position, whose duties were to work with the acquisitions editor developing B and C level titles. In the assistant editor position, Helfrich testified she worked with the author to edit the manuscript, commissioned reviews and analyzed the responses of the reviewers.<sup>14</sup> As an assistant editor, Helfrich

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<sup>11</sup> It is undisputed that the "associate editor" position is in the unit.

<sup>12</sup> In evidence is a memorandum from Besenoff, dated February 28, 1995, recommending that Harper Collins promote Cohen from associate development editor to development editor. A title change form, reflecting Cohen's February 1995, promotion is also in the record.

<sup>13</sup> Kirby left around the time of the acquisition and Kimball was promoted to development editor before the acquisition.

<sup>14</sup> The process of commissioning reviews involves contacting professors who teach the applicable course or are otherwise active in the field and asking them to evaluate a book proposal or manuscript, usually by responding to detailed questionnaires. Professors are

also prepared the manuscript for production, by making sure the permissions were in order, the pieces of the manuscript were in place and in the manuscript was in publishable form. When Helfrich was promoted to the associate development editor position she received a 10 % wage increase.<sup>15</sup>

The record reflects that associate development editors are comparable in function to non-bargaining unit development editors, but are more junior. Like the development editors, associate development editors report directly to the development manager,<sup>16</sup> but they are supervised more closely. According to Wohl, the duties and responsibilities of the two positions are identical. Both positions are responsible for the quality of the book's content as well as its marketability. Individuals in both positions are responsible for the length of the book, the artwork and photographs and captions. Associate development editors and development editors are responsible for permissions and budgets. As part of their jobs, individuals in both positions analyze competing books and trends in the market. Both positions entail responsibility for creating a development plan, which establishes the content and schedule of the book as well as the strategy for bringing it to the market place. In developing an art plan the development and associate development editors, determine the number of pieces of art and how they should look. As an example, Wohl explained that the development editor

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paid an honorarium for this, which is determined by the acquisitions editor. As an assistant editor, Helfrich received leads on potential reviewers from acquisitions editors, and marketing staff.

<sup>15</sup> The position description for assistant editor describes the position as one which was responsible for the development of lower level titles.

<sup>16</sup> It appears from the record that the precise chain of command varies depending on the discipline and the circumstances. When Helfrich was first promoted into the associate development editor position, her discipline was English and she continued to report to acquisitions editor, Ann Smith, the same person she had reported to as an assistant editor, apparently because there was no development manager in the English group at the time. However, when Helfrich's discipline changed to social science, she began reporting to the development manager for that discipline rather than to an acquisitions editor.

might find a way of treating maps that was unique and therefore would make the book a better learning tool than the competition.

Development editors and associate development editors are responsible for developing the manuscript with the author before it goes into the production process. This is a complex process that involves consulting with likely users of the book, studying the competition and making comprehensive judgments as to the type of book it should be. In this connection, the development editors and associate development editors are responsible for creating a pedagogical plan, which is a publishing term for building learning aides into the book. They also ensure that the book is built around consistent themes and that there are good examples for those themes. Development editors and associate development editors also participate in marketing initiatives such as focus groups and dealing with reviewers. While standard fees are offered to reviewers, there is some discretion in setting fees vested in the development and associate development editors. In addition, the development editors and associate editors might consult the sales staff for marketing insights. Helfrich testified that in her current position, she spends approximately 75% of her time actually working on specific manuscripts. The remainder of her time is spent assisting acquisitions editors at conferences, book conventions and providing other marketing support.

The development editor and associate development editors act as the focal point for the team working on the book from the editorial, production and marketing departments. The development editors and the associate development editors will advocate for the book within AWL, in order to ensure that appropriate resources are devoted to it. Further, where there are multiple authors the development editors and associate development editors mediate disputes and resolve conflicts among them. According to Wohl, development editors and associate development editors use a variety of "carrots and sticks" in managing authors. In order to gain the author's

compliance with suggestions, development editors and associate development editors will encourage authors to accept their suggestions or insist that they do so on pain of having the project stopped.

With respect to scheduling, the development editors and associate development editors are responsible for making adjustments as needed. At the time the book is signed a publishing date is set. However, the development and associate development editors might need to determine a new publishing date or otherwise adjust the schedule based upon the needs of the book.

The record reflects that associate development editors and development editors do not have direct budgetary responsibilities, but they significantly impact on budgets. Before the book is turned over to development and generally before the contract with the author is signed, a publishing plan that contains the publishing date and budget for the book is developed by the acquisitions staff in consultation with the rest of the book team. Wohl noted that significant determinants of the book's budget include the length of the book, and the artwork, matters over which the development editors and associate development editors exercise significant control. Development is provided with a budget for each project and it is the associate developmental editor's job to stay within that budget on his or her projects or suggest needed expansions. Within the budget the associate development editor can allocate resources with substantial discretion.

Development editors and associate development editors may recommend against publishing a manuscript if in their view there are problems that are not capable of resolution. As an example, Wohl noted that associate development editor Diane Wansing recommended that a book be deferred and overhauled so that it could compete more effectively. Her recommendation was accepted by Wohl and ultimately by the general manager. Further development editors including associate development editors might slow the schedule of a book down in order to deal with certain issues. In doing so

they would involve a number of people including the acquisitions editor, Wohl, and possibly the author and the general manager. However, the record reflects that the decision to stop or drastically change course on a book is a complex decision involving many factors and, among other things, legal considerations.

By way of comparison with the associate development editor position, at this hearing there was testimony concerning the associate editor position. The record reflects that associate editors perform primarily an acquisitions function, but on smaller market, B and C level books.<sup>17</sup> Associate editors also develop the manuscripts, but not to the same degree that an associate development editor or development editor would because the smaller market books do not require or merit the level of development that the bigger market books receive.<sup>18</sup>

Associate editors spend less time on each manuscript than associate development editors and therefore work with many more titles at the same time. Among other things, associate editors are responsible for reviewing summaries of peer reviews, discussing the reviews with authors, setting and maintaining deadlines, coordinating with the sales and marketing staff and production and assisting with the development of marketing materials. The actual signing of authors is done by the acquisitions editors even on the smaller market books. At the July 1997, arbitration Wohl described the associate editors as profit centers in the sense that they have specific profit and loss responsibility for their own lists in a manner similar to the non-unit acquisitions editors. With respect to career path, the record reflects that it is easier for an associate development editor to progress to development editor than for an associate editor to

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<sup>17</sup> The classification of a book at A, AA, B or C is done by the acquisitions editor in conjunction with higher management.

<sup>18</sup> At the July, 1997 arbitration, Wohl described the associate editor as the functional equivalent of the acquisitions editor.

progress to acquisitions editor, which the parties stipulated is a supervisory position within the meaning of Section 2(11) of the Act.<sup>19</sup>

### Project Manager

Project manager is one of two disputed positions in the production department, which the record reflects, was the subject of substantial reorganization in the summer of 1997. The project manager position was one of several positions created during this reorganization. Prior to the reorganization, a project editorial manager, a non-unit position worked directly on a few books and supervised a position called a project editor, a unit position.<sup>20</sup> Both of these positions were eliminated when the project manager position was created.

Ellen MacElree, who was laid off as a project editor and rehired in the position of project manager after the reorganization, testified as to her duties in both positions. As project editor, MacElree was assigned to manuscripts as they were routed to the production department. Copy editors reviewed the manuscript to ensure its completeness and then arranged a “launch meeting” with the various individuals in the

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<sup>19</sup> In support of the Employer’s position that associate editors should be excluded from the unit, Wohl testified at the arbitration that hearing to the high level of judgement and responsibility exercised by associate editors, specifically that associate editors, who he described as junior acquisitions editors, sign authors, negotiate contracts, develop materials to make sure the project meets market needs and work with reviewers and the sales organization. Wohl testified at the arbitration that among the duties of associate editors, is the need to manage the contract with the author to ensure that the manuscript is presented in a timely manner and to ensure the author is paid according to the contract. In addition, associate editors travel on campus to research the market, identify potential authors and reviewers and attend academic conferences. At the arbitration, Wohl testified further that associate editors build a budget for the book and are responsible for its general success. Although Wohl testified at the arbitration that associate editors typically work on smaller market books, he added that some times they work on very important titles.

<sup>20</sup> The January 23, 1997, memo described above, argued that the project editor position should be excluded from the unit as an administrative position. At the July 1997, arbitration the Employer took the position that project editors were among the positions listed in Appendix A which should be excluded from the bargaining unit.

editorial, production and marketing departments working on the book in order to discuss such matters as the schedule and any special needs the project entailed. The project editor created tagging guidelines,<sup>21</sup> which are codes for the design elements of the book. It was the project editor's responsibility to act as the liaison with the author. The project editor reviewed the copy-edited manuscript with author and reviewed the designs with the designer. In addition, the project editor hired free lance proofreaders and monitored their work. The project editor then sent the manuscript to the typesetter after which he or she would review the proofs and release them to manufacturing who created a film, which the project editor reviewed

Copy editors edit the book for readability and grammar. In a more complex book, the copy editor may have to edit for items left out or put in the wrong place or if the manuscript is poorly written, the copy editor may need to rewrite substantial portions. The extent to which a particular manuscript needs to be copy edited may be made by the acquisitions editor or the project editor. The project editors hired copy editors and reviewed their work. MacElree testified that in hiring copy editors, who are not employees of the Employer, she relied upon personal experience and recommendations. The compensation for copy editors was determined by guidelines for various levels of work. It was the project editor's responsibility to make a determination as to the level of copy editing required (standard, heavy or rush job) and then in consultation with a supervisor determined the appropriate level of compensation. MacElree testified that she made recommendations on this, which were typically followed. With respect to proofreaders MacElree testified that she could make recommendations to hire additional

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<sup>21</sup>Each element of the book is given a letter that is a code for the spacing, type specification and other matters that relate to how that part of the book will look.

proofreaders when it was necessary to get the project back on schedule and her recommendations were generally followed in this area as well.<sup>22</sup>

According to MacElree, project editors were not directly involved in the budget of the book, but they did have substantial responsibilities with respect to the schedule. If the project was off schedule it was the project editor's responsibility to try and remedy the situation by either hiring more free lancers or shortening his or her own time for review.

At the time of the reorganization in 1997, there were approximately nine project editors who reported to project editorial managers. The reorganization, according to Farrell, was intended to streamline the production process by making the project manager the focal point. After the project manager's position was announced, MacElree testified, Farrell encouraged her to apply for it.<sup>23</sup> MacElree experienced no break in service when her position changed. She did not fill out a new employment application for the production manager position, but she did submit to an informal interview with Farrell. According to MacElree, one other former project editor and two former project editorial managers assumed positions as project managers. All four project managers report directly to Tom Farrell, the head of the Production Department.

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<sup>22</sup> Paula Soloway, a vice president and executive manager for editing, design and production, was a project editor earlier in her career for Harper and Row. She testified that as a project editor, a position she held more than 10 years before the hearing, she would review the manuscript and evaluate it for difficulty, assign it to a copy editor whose work she would evaluate, work with the designer and review the design, make sure all of the elements of the book were in place and ready the manuscript for page makeup. She would confer with the author on a daily basis, review the proofs and send them to the author, send the manuscript to the proofreader and review the manuscript herself for quality control. Her responsibilities as a project editor also included dealing with the indexer and getting the proofs corrected. Soloway testified that these tasks are still a portion of the project manager's responsibility.

<sup>23</sup> The job description for the project sets out qualification for the position that includes substantial experience in supervising projects and electronic production technology and in depth technical knowledge.



At the time she assumed her new position, MacElree received about five hours of training in scheduling as well as training in the budgetary process, which took her about three months to learn. MacElree received a 10% increase when she became a project manager and she is now eligible for a bonus up to 20% of her salary based on the company's performance and the sale of her books. At the time she testified, she had not yet received a bonus. As a project editor MacElree was eligible for overtime pay. Currently she is not, although she works approximately an additional hour and a half per day. In neither position is MacElree required to punch in or out. In both positions, MacElree had her own window office.

The record reflects that the project manager position involves many of the same elements as project editor, but with more independence, added budgetary and increased scheduling responsibilities.<sup>24</sup> In evidence is the electronic posting for the project manager position. The job description describes the project manager as being responsible for ensuring that the manuscripts and paperwork received for production are acceptable technically and editorially and appropriate to the market. Among the duties listed are to maintain editorial and technical quality, to develop and control plant budgets, develop and control schedules, hire and supervise freelancers and direct authors in the production process. MacElree testified that approximately 60-65% of her current duties are the same as her duties as project editor.

Unlike the project editors, project s are not specialized by topic or discipline. Assignments are distributed by consensus and consultation with Farrell. Further, project editors were responsible for fewer titles than project managers are. As a project editor, MacElree testified she generally handled one large project and two or three smaller projects at a time. Currently she typically handles two complex projects and four less

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<sup>24</sup> Position descriptions for project and project editor respectively list similar job responsibilities including reviewing manuscripts, hiring freelancers and controlling scheduling and budgets.

demanding titles. Farrell concurred that project editors are responsible for substantially more titles than project editors were.

Like the project editors, project managers are responsible for ushering the manuscript through the production process. They make sure the manuscripts are complete and the paper work is in order and they coordinate among the various departments. Project managers also create the tagging guidelines and sample pages for the designer. Further, project managers arrange a launch meeting. However, unlike the project editor who was a participant at the launch meeting that was run by the editorial production, the project managers are in control of the launch meetings.

Similarly, whereas the project editor maintained a schedule created by the pre-press supervisor, a non-bargaining unit position, it is now the project manager's responsibility to create the schedule.<sup>25</sup> In his testimony, Farrell noted that while there are baseline schedules, scheduling is different for each book and adjustments must be made by the project manager based on how much work needs to be done, the author's schedule and the size of the book, among other things. When there are disruptions of the schedule, the project manager can make adjustments to correct the situation.

Further, unlike the project editor, project managers have specific budgetary responsibilities. Although a preliminary plant budget<sup>26</sup> for each book is prepared by an acquisitions editor, the project manager, is responsible for developing a more complete, accurate budget based on an estimate of pre-press costs.<sup>27</sup> MacElree testified that she follows guidelines in the budget process. For example, there are guidelines for photo

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<sup>25</sup> Creating a schedule involves entering the date for each phase of the production process. For example the project enters a target date for the completion of copy editing, proof reading, key boarding and the creation of sample pages. Each function has a preset time limit that can be overridden by the project.

<sup>26</sup> The plant budget consists of costs related to printing, editorial functions, copy editing, proofreading, design, scanning photos and shipping.

research costs. MacElree testified that in the event she has to exceed those guidelines, she consults with Farrell. The production manager is also responsible for periodically updating the budget to reflect developments in the production process. In the event the final budget substantially exceeds the budget submitted by the acquisitions editor, it is the project manager's responsibility to notify the acquisitions editor of the discrepancy. When the project is faced with budget overruns, he or she can make judgements as to how to compensate. Similarly, the project manager can agree to pay more for certain items provided they stay within budget. In the event a project manager wanted to substantially alter the budget on a project, he or she would have to discuss the matter with management. The record reflects that project managers were recently given the authority to issue purchase orders for up to \$15,000. However, MacElree has not yet exercised this authority. At the time Farrell testified, his electronic approval was still required for all purchase orders.<sup>28</sup> However, the record reflects he never refused to give such approval.

According to MacElree, as a project manager she has more discretion in hiring freelancers than she did as project editor.<sup>29</sup> In her current position she is free to hire whom she wants without consulting a mid-level supervisor. Similarly, MacElree, as project manager, can determine the number of proofreaders needed, while as project editor she had to consult her supervisor before assigning more than one proofreader. When there is a problem with freelance copy editors or proofreaders, the project manager can, without consultation, reassign the work. MacElree also testified that as a

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<sup>27</sup> As Farrell described it, the project is overall responsible for the plant budget although he or she works with individuals who are responsible for specific aspects of the budget. For example, the design has specific responsibility for the design budget.

<sup>28</sup> Farrell testified that he expected this to change when a new accounting system was implemented.

<sup>29</sup> In addition to proofreaders and copy editors, project managers may hire free lance indexers and project editors to coordinate certain aspects of the project.

project editor she did not directly deal with the manufacturing manager,<sup>30</sup> a function her supervisor performed and which has been absorbed in the 'project manager' position.

The record reflects that project managers are not involved in personnel or general operating budgets for the employer. They have no input into the acquisition of manuscripts and they cannot discontinue a project.

#### Design Manager

Design manager is a position that existed in the Harper Collins organization, but was substantially altered, pursuant to the reorganization of the production department, in the summer of 1997.<sup>31</sup> Currently, there are three design managers, including Rubina Ya, who were hired by Harper Collins as a senior designer in 1995, and became a design manager during the 1997 reorganization. It is undisputed that the senior designer position was a bargaining unit position. Further, senior designer was one of the positions the Employer sought to exclude from the bargaining unit during the May 1997, arbitration and in the January 23 memorandum.

At the time of the reorganization there were about six senior designers, one of whom left shortly before the reorganization took effect. The remaining senior designers were laid off. Ya was urged to apply for the design manager position.<sup>32</sup> It appears that Ya was the only senior designer who did so.

Ya testified that during the time she was a senior designer, the chain of command to whom she reported varied from time to time. At the time of the reorganization, she reported to Alice Fernandez-Brown, a design manager, who in turn

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<sup>30</sup> MacElree testified that her dealings with the manufacturing involve informing manufacturing when the pages are relayed to the printer, and updating them on problems with the schedule.

<sup>31</sup> The position of design manager is not listed in Appendix A. However Appendix A does list, among others, the following design related positions, art designer, senior designer and staff designer.

<sup>32</sup> Another position for which Ya was told she was qualified, but for which she did not apply, was cover design specialist.

reported to Farrell. According to Ya, although Farrell interviewed her for the job, Fernandez-Brown supervised her on a day-to-day basis, by reviewing Ya's designs, evaluating her work in formal performance appraisals and providing Ya with necessary training.<sup>33</sup> According to Ya, it was Fernandez-Brown with whom she discussed minor personnel matters, such as whether or not she could take a day off. Tom Farrell testified that prior to the reorganization the design managers performed some design work and supervised the senior designers who reported to them.<sup>34</sup>

The record reflects that the senior designers designed the interior and covers of books.<sup>35</sup> Since the reorganization, design managers continue to create designs for the interior and covers of books and with respect to these aspects of the job, little has changed. In both positions, Ya testified, she has received the manuscript with a set of "tagging" guidelines prepared by someone else, which contains an explanation of the elements of the book and which Ya has followed in preparing the design. In both positions she has routed her designs to other individuals working on the book in the three departments and has attended a meeting during which the design is either approved or rejected. After the design is approved, Ya, in both positions, has created a template, from which pages can be made. In the course of preparing the design Ya

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<sup>33</sup> Prior to the reorganization, the employer also maintained an Art Director position, which would in a general way supervise designs and work on special projects. This position was eliminated in the reorganization and the functions performed by the Art Director appear to have been absorbed at least in part by the design managers and cover design specialists.

<sup>34</sup> The parties stipulated that employees of the employer reported to the design manager prior to the reorganization. However, they did not stipulate that prior to the reorganization, design managers were supervisors within the meaning of Section 2(11) of the Act. The design managers were non-unit employees.

<sup>35</sup> In evidence is the written job description for senior designer, which substantially reflects those duties Ya testified she performed in this position. The job description reflects that senior designers were responsible for prioritizing their work load and choosing art studios. Further the job description reflects that senior designers were expected to maintain the design integrity without exceeding the design budget for the book and to stay on schedule.

performs certain technical functions such as sizing photographs as well as communications functions, such as drafting notes to explain special situations. Similarly, as both a senior designer and design manager Ya has had the responsibility of creating covers from specifications provided to her. Ya is provided with a cover spec sheet which contains the details of the cover, including, size, trim, and title page.

In her current position, Ya continues to spend 80% of her time on actual design work.<sup>36</sup> However, whereas as a senior designer her immediate supervisor was a design manager, she now reports directly to Tom Farrell, who does not have a design background and provides her little direction with respect to the design work.<sup>37</sup>

Further, the number of titles for which Ya is responsible has doubled since she became a design manager and accordingly, her use of free lancers to perform the design work has substantially increased. While Ya was authorized to hire free lancers as a senior designer, she did so rarely, only once or twice, and the responsibility for reviewing freelancers' work was largely the province of the design manager. In her current position, Ya supervises the work of the freelancers directly. Freelancers are paid according to price guidelines within which the design manager has some freedom to

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<sup>36</sup> In evidence is a written job description for the design manager's position that is dated August 1, 1997. The job description endows the design manager with primary responsibility for the design aspects of the book and lists responsibilities in budget, scheduling and Administrative Planning. According to the job description, design managers, among other things are authorized to work with freelancers, approve their work and approve quality proofs. Further, design managers can recommend whether work will be done in-house or by a freelancer. The requirements for candidates for the job are, among other things, two years professional experience in text-book design and experience with specific soft-ware, in addition to a strong portfolio.

<sup>37</sup> According to Ya, she spends about 10% of her time on budget and 10% on scheduling.

negotiate.<sup>38</sup> In applying the price guidelines, Ya must make artistic judgments concerning the complexity of the work and the amount of time it is likely to take.<sup>39</sup>

Design managers currently have specific budgetary responsibilities that, in addition to negotiating with freelancers and design vendors, include monitoring costs and providing design costs to the production . The record reflects that these were not among the duties of the senior designers. When Ya hires a free lancer or contracts with a vendor, she creates an electronic purchase order, in which she describes the job and how much it will cost. Farrell approves these purchase orders. The record reflects that Farrell has rarely, if ever, refused to approve a purchase order generated by a design manager. Ya testified that she would discuss any unusual costs with Farrell, prior to sending out the job.<sup>40</sup>

The design managers currently deal directly with the printer, and vendors, functions that were not performed by senior designers. Prior to the reorganization, prices for vendors and freelancers were negotiated by the design managers. According to Farrell, the design manager can pull a job from a particular vendor or freelancer in order to improve the quality of the work or to maintain the schedule, without any input from him.

With respect to the cover, it is currently the job of the design manager to prepare a cover estimate sheet that describes the cover and the process that will be applied, as well as an estimated cost of the work. In estimating costs, the design manager refers to established guidelines. Costs substantially in excess of those guidelines, Ya testified,

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<sup>38</sup> At some point after Ya became design manager, the price guidelines were updated and the design managers were asked to provide input into this process.

<sup>39</sup> The record reflects that there is an assistant in the department with whom Ya sometimes works, but it does not appear that Ya is in the chain of command with respect to that individual. Nor do any other employees of the employer report to her.

<sup>40</sup> Farrell in his testimony described the budget constraints as being extremely broad. In addition, he testified that in the rare case that the design manager would want to exceed the guidelines he or she would discuss the matter with him.

she would discuss with Farrell. In preparing this document Ya obtains some of the information from the cover spec sheet and some she develops in the course of creating a design. It is also the responsibility of the current design manager to track the actual design costs and to provide the costs to the production . It appears from the record that the Employer intends to vest in the current design managers the authority to generate purchase orders for up to \$5,000, without approval. However it does not appear that this has been implemented.

With respect to scheduling the design manager currently is responsible for monitoring a complicated set of deadlines. The time limits are set by a computer program, but can be overridden by the design manager on an as-needed basis. When one aspect of the design requires additional time, it is the design manager's responsibility to try and make up the time elsewhere. The design manager also coordinates with the project manager with respect to the schedule of the book.

As a senior designer, Ya attended regularly scheduled team meetings that were also attended by Farrell, the design managers, editorial managers and project editors. Each book assigned to the team was discussed in terms of problems, scheduling, other matters related to production. In her current position Ya attends production meetings which are similar in terms of content to the team meetings she used to attend as senior designer, and are attended by Farrell and those employees who work under him as well as the desk top supervisor. Ya does not attend any meetings at which general budgets for the company or department are set or where the subject is wages and benefits of employees. Nor does Ya attend meetings involving the acquisition of manuscripts.

Each design manager has a private office, as did the senior designers. When Ya assumed the design manager position she received a 10% salary increase.<sup>41</sup> As a senior designer, Ya was paid hourly, while as a manager , she is paid on a salary. The



record reflects that design managers are eligible for certain bonuses, but that Ya had not received any bonuses at the time of the hearing. Formally, Ya's hours have not changed since assuming the senior designer position. However, she testified she works longer hours because of the increased volume of work.<sup>42</sup>

#### Full Service Production Manager

The record reflects that AWL publishes books by two different and parallel methods of production, full-service and in-house. The in-house team utilizes the production department, headed by Farrell to produce its list. However, the company has too many titles to rely on its own editors, designers and other staff. In order to accommodate the spillover, the Employer maintains a full-service team which deals with outside vendors to whom the company contracts the production work on its full-service list. About 75% of AWL's titles are produced through the full service group. Paula Soloway, who has been the Executive for Design, Editing and Production since just prior to the point that AWL acquired Harper Collins higher education group, is responsible for all the editing, design and production functions on the full service list.<sup>43</sup> Eight individuals report directly to Soloway, six full service production managers, a cover design manager and an administrative assistant. Soloway reports to Betty Aaronson, who as noted above, is a vice president and director of production. At the time Soloway testified there were approximately 110 titles being handled by the full-service team.

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<sup>41</sup> The record reflects that there was no break in service when Ya assumed the design manager position.

<sup>42</sup> Michael Weinstein, formerly, the vice president, director of production and manufacturing at Harper Collins and then AWL testified at the 1997 arbitration in support of the Employer's position that senior designers should be removed from the bargaining unit. He testified that senior designers, among other things, set budgets and kept schedules, tracked artwork and photos, sized photos, and established the "look" of the book. Weinstein testified that senior designers could hire and fire free-lancers. With respect to budgetary responsibilities, Weinstein acknowledged that there are guidelines, but testified that basically they set the budget.

Soloway testified that the full-service manager position was created by Harper Collins in 1994. Initially, the position was called electronic production , and was not included in the unit.<sup>44</sup> In or about August or September of 1996, AWL changed the title to full-service production manager, while leaving the actual job description intact. Lisa Jessup, the representative responsible for this bargaining unit, testified that she was unaware of the full service manager position until it appeared on organization chart the Employer submitted during the May, 1997 arbitration. According to Jessup, neither the full service production manager, nor the electronic production manager positions existed at Harper Collins. Jessup testified that the Union did not receive any notice as to the creation of these positions from the Employer, as required by the contract. Nor did the shop stewards report the creation of these positions.

In general, it is the job of the full service production manager to deal with the outside vendors, including project editors designers and make up people on a day to day basis. Vendors are chosen by Soloway and assigned to particular full-service production managers. Before deciding to use a vendor Soloway meets with vendor and makes an independent assessment of whether the vendor meets with the Employer's needs.<sup>45</sup> However, the full service production managers assess the vendor's work to make sure that it meets AWL's standards and brings any deficiencies to Soloway's attention. Further, the full service production managers have input of an advisory nature into the selection and use of new vendors.

The full service production manager may, with Soloway's approval, reassign work to another vendor in order to maintain the schedule. Soloway testified she has not

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<sup>43</sup> Farrell and Soloway determine collaboratively which titles are full-service and which will produced in-house. Their decisions in this regard are primarily guided by the availability of staff and the timing of the turnover.

<sup>44</sup> Aaronson testified that the electronic production manager was never in the bargaining unit. Further the position does not appear to be listed in Appendix A.

rejected the recommendation of a full service production manager to reassign work and noted that on two occasions work was reassigned from an outside vendor to in-house pagers based upon the full service production manager's recommendations. The actual hiring of copy editors, proofreaders and the day to day contact with the author are performed by a contract project editor.

Among other things, full service production managers handle budgets, monitor schedules and perform quality control functions. With respect to scheduling, the full service production managers are responsible for monitoring key dates, the turnover date, the date the manuscript enters into the production process, the date the turn over ends and the date the bound book is due to be produced. Based upon the key dates, the full service production managers develop a schedule of interim deadlines that they monitor on a weekly or daily basis with the vendors at each stage of the production process. The record reflects that the process of developing and maintaining the schedules involves substantial judgement, since books differ in terms of complexity and their elements. It is the full service production manager's responsibility to create a schedule that works for the particular book.

Maintaining budgets is another major responsibility of full service production managers. At the time the manuscript comes into production the profit and loss statement on the book, developed by the editorial department, encompasses only an estimate as to what the production needs will be. It is the full service production manager's job to assess the manuscript at turnover and develop a an accurate budget for each line item of the production process, such as copy editing, proof-reading, indexing design, art creation and photo research and scanning. Having developed the budget, it is the full service production manager's responsibility to negotiate with vendors. In negotiating with vendors, the full service production manager uses a vendor

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<sup>45</sup> Soloway testified that price is only considered after it has been decided that the vendor

estimate sheet which spells out what the Employer wants the vendor to do and how much it should cost. The vendor then may try and negotiate for a higher price. Although there are guidelines for the payment of vendors, approved by Soloway, based upon the complexity of the work, the full service production manager appears to have substantial freedom to negotiate prices.<sup>46</sup> Further, the full service production manager's assessment as to the complexity of the work will have a substantial impact on how much the vendor is paid. Once a price is agreed upon a purchase order, which is signed by the full service production manager and countersigned by Soloway, is drawn up. Soloway testified that she would question unusual expenses and then approve them if the full service production manager made the case for them.

Assessment of the book for purpose of determining the schedule and budget is a complex process that is heavily dependent on the judgment and experience of the full service production manager. In making the assessment the full service production manager examines the paper work on the book, considers the number of photos, whether they have to be researched, the extent of line art, the amount of author involvement, complexity of design, and other factors which will impact on production costs and the time needed to perform the work. With respect to the design aspects of the book, the full service production manager is responsible for making sure the design works and that the headings in the book are clear. The full-service production manager is also responsible for making sure the off-site designer receives and understands all of the design instructions. Often the full service production manager will return the design to the off-site vendor because the instructions were not followed or the design does not work. Among the responsibilities of the full service production manager is to run the launch design meeting, particularly on big market books. Also in attendance will be the

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meets the employer's standard.

<sup>46</sup> There are about 12 different line items for which there are guidelines including, cover, interior design, art creation, proof-reading and indexing.

acquisitions editor, the development editor, and the marketing manager. The off-site project editor and designer will be brought in on speakerphone. In certain cases the cover design manager might attend this meeting.

The full-service production manager participates in the Employer's bonus program, which is administered to non-unit employees.<sup>47</sup> The amount of the bonus is determined based on individual performance as well as the performance of the company, and groups within the company. Aaronson determines the amount of the bonus for full-service production managers, based in part on Soloway's recommendations. Each of the full-service production managers has his or her own office.

#### Cover Design Manager

Another title on the full-service team which is in issue herein, is cover design manager. Currently, there is a single individual in this title, Nancy Danahy, who is responsible for the production of covers for all approximately 110 titles on the full service list. This position was created during the 1997 restructuring. The record reflects that prior to creation of the cover design manager position, the functions of the title were performed by the executive manager of art, design and technology, which was held by Mary MacDonald in 1997.<sup>48</sup>

Manuscripts are turned over to the production department with a cover design specification sheet that is completed by the acquisitions editor and the marketing department and consists of a set of instructions with respect to the requirements of the cover. These instructions would include the level of complexity of the cover, whether there will be a photo or art, the colors and most often a brief description of what the editor feels should be on the cover. Initially, the cover design manager evaluates the

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<sup>47</sup> It is not clear from the record whether all non-unit employees participate.

instructions to make sure there is enough detail from which to create a cover. The cover specification sheet does not contain any budgetary limits or guidelines.

The next step is for the cover design manager to call a cover launch meeting, which might be as informal as phone call, at which the cover design manager confers with acquisition and marketing people to ensure that they are agreement on the concept of the cover. Determining the concept of the cover is a collaborative effort between the cover-design manager who brings her artistic and design expertise to the bear, the acquisitions editor who is most familiar with the content of the book and the marketing manager who is most familiar with the sales imperatives.

With respect to the actual production of the cover, the cover design manager will either perform the work or send it out to freelancers. The record reflects that the cover design manager has complete discretion to hire freelancers. It is the cover design manager who interviews the freelancers, and reviews their portfolios and decides whether or not to hire them. Further, it is the cover design manager who reviews the full service list and determines how many covers she can handle and how many must be sent out to freelancers. The record reflects that in the year before the hearing, the cover design manager produced about half the covers with the others being done by freelancers. The cover design manager has the discretion to refuse to use a freelancer again or to offer a "kill fee" and bring in another designer, or handle it herself. A kill fee is paid to a freelancer for work already performed when the project is taken away. Further, it the cover design manager's responsibility to issue instructions to the freelance designer with respect to the content of the cover.

The cover budget for each individual book is controlled by the needs of the project. Covers are put into categories based on the complexity of what is required. The

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<sup>48</sup> MacDonald however, had additional duties not performed by the cover design manager. As set forth above, the design managers and senior designer, co-reported to Macdonald, giving her in-house as well as full service responsibilities.

cover design manager determines what category a particular cover belongs in based upon the cover specification sheet, communications with the acquisitions editor and her artistic judgment. Depending on the category in which the cover is placed, particular price guidelines will be followed. For example, Soloway testified that for category 1 covers the price or budget guideline is \$750. A level 2 cover would be expected to cost about \$1500 and the guideline for a category three cover would be about \$2500 or more.<sup>49</sup> The profit and loss statement developed by the acquisitions editor will generally contain an estimate of the cover costs, based on the guidelines, which will then be revised once the book is turned over to production, based in part on the expertise of the cover design .<sup>50</sup> In the event the revision on the estimate for the cover budget is significant, particularly if it is higher, it is the responsibility of the full service production group to communicate this to the editorial department. Further, the cover design manager will work with the full service production manager in an attempt to make up the overrun on the cover with savings elsewhere in the production process.

Based loosely upon the guidelines, the cover design manager negotiates the price with freelance designers.<sup>51</sup> After a price has been agreed upon, a purchase order is created which is countersigned by Soloway. According, to Soloway, she has never refused to countersign a purchase order. Further, Soloway testified that the countersignature is in most cases merely a formality, since the cover design has signing authority for about \$5,000 per project.

With respect to budgets, the record reflects that the cover design manager has input with respect to the level of funds allocated to covers. For example, Soloway

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<sup>49</sup> The guidelines were developed with Soloway's participation, and after consultation with the cover design manager.

<sup>50</sup> Soloway testified that sometimes there is no estimate for the cover on the profit and loss statement, because the acquisitions editors lack the expertise to develop one.

<sup>51</sup> In this connection, Soloway testified that sometimes the cover design manager can negotiate special pricing such as volume discounts.

testified that in determining the last budget, Danahy voiced the opinion that more money had to be allocated for certain titles. The profit and loss statements were then changed based upon Danahy's recommendation. However, Danahy and Soloway both testified that the cover design manager has no authority to revise the price guidelines.

Scheduling is another responsibility of the cover design manager. It is Danahy's responsibility to set deadlines at each stage of production for the cover that will accommodate the bound book date. With respect to scheduling the cover design manager must keep in mind that certain covers need to be produced in time for advertising and promotional efforts.

Among the cover design manager's duties are to review the proofs from the printer and make any necessary corrections for the entire full service list. The record reflects that the cover design manager is authorized to send proofs back to the printer on her own authority.<sup>52</sup>

The cover design manager does participate in the Employer's bonus plan. She works in a private office a few doors away from Soloway.

#### Associate Marketing Manager

The role of the marketing department is to develop promotional plans, advertising and other tools to sell the Employer's list. It is headed by Marjorie Waldron, the Vice President and Director of Marketing. Reporting to her, directly or indirectly, are the entire marketing and advertising group, including the marketing managers for specific disciplines, the associate marketing for strategic initiatives, the executive marketing and the creative services manger. Waldron testified that at the time she joined AWL, in 1996, there were two people in the associate marketing position, who have since left the

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<sup>52</sup> In evidence is an electronic posting, dated August 1997, for the cover design manager position, which substantially corroborates the testimony on this position. Although the posting on its face refers to "cover design specialist", the parties stipulated the posting referred to the cover design manager position.



company. Currently, there is only one associate marketing , named Theresa Delcogliano, who testified at the hearing.

Waldron testified that the associate marketing manager position was not a unit position at any time since she began her tenure in 1996. She based her assertion on personnel records, which she testified, she checked before the hearing. According, to these records, Waldron testified that there was no evidence that associate marketing managers were ever in the bargaining unit. The Employer did not produce the records on which Waldron relied. Further, her claim that it was not a unit position is contradicted by the January 23 1997, memo which includes associate marketing manager position as one which should be removed from the bargaining unit on the grounds that it is administrative. The January 23 memo described associate marketing manager as a new position, created six months ago. The position is not listed in Appendix A.

Theresa Delcogliano was first promoted to the title associate marketing manager in January 1997 from a marketing coordinator position.<sup>53</sup> Initially, she was the associate marketing for the education list. In January 1998, her title changed to associate marketing manager for strategic initiatives, which is the Employer's program for promoting the company as a whole, as opposed to promoting a specific product or products within a particular discipline. The record reflects that Delcogliano is the first associate marketing manager not associated with a specific discipline.

At the time Delcogliano assumed the position of associate marketing manager for the education list, no one was in the marketing manager position for that discipline.

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<sup>53</sup> Prior to assuming her current position Delcogliano, was a marketing coordinator for education. Her precise duties in this job are not clear in the record. However, it appears this was a unit position and it was one of the positions the January 23 memo argued should be removed from the unit. Further, Waldron testified in the 1997 arbitration that marketing coordinators were responsible for commissioning post publication reviews, dealing with authors on marketing issues and generally assisting the marketing managers. Waldron also testified at the arbitration that under her leadership marketing coordinators

Accordingly, Delcogliano assumed substantially more responsibility than other associate marketing managers.<sup>54</sup> For example, Delcogliano drafted marketing plans, which is typically done by marketing managers. In fact, the record, reflects that unlike most marketing managers who write a marketing plan for specific titles, Delcogliano was assigned to write the marketing plan for the entire education list.

With respect to her current duties for the strategic initiatives program Delcogliano uses workshops and alliances with other companies as well as other marketing tools and strategies to promote AWL as a company, which may involve sponsoring specific projects or sets of projects within a discipline. In the course of performing her duties, Delcogliano implements market research such as sending out questionnaires and running workshops in order to ascertain the needs of potential customers. She works closely with the advertising group, reading advertising copy, making sure it is approved by the appropriate individuals and clarifying any questions about it.

Workshops appear to be a significant part of Delcogliano's job. The workshop program is a relatively new initiative, pursuant to which the Employer obtains speakers and plans events, with the purpose of the promoting the company or a specific book or group of projects. The Employer maintains a budget for running workshops, as well as certain guidelines, which the associate marketing manager applies in determining whether or not a particular marketing strategy meets the qualifications for workshop funding. In the event the strategy does not qualify as a workshop under the company guidelines the associate marketing manager discusses with the marketing manager whether the strategy is appropriate for the project. Once it is decided that a particular workshop should be implemented, the associate marketing manager procures speakers,

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were given copy writing duties previously performed by copy writers, a position which was part of the bargaining unit, but was at some point eliminated.

obtains space and arranges for catering. With respect to the speakers, the record reflects that authors are often used, as well as local professors. Often, marketing managers obtain the names of potential speakers from the marketing manager. Whether the workshops will be specific to a particular discipline or project or include many books or more than one discipline is determined by the marketing manager. Space for workshops is generally obtained from a university. However, it appears that that the associate marketing manager would have discretion to use a hotel in appropriate circumstances. The associate marketing manager reviews significant deviations from the ordinary cost for space with the marketing manager. Similarly, with respect to catering, the associate marketing manager discusses any unusual costs with the marketing manager. It is the associate marketing manager who signs the contract with the university or other space provider and ensures that the agreed upon terms are properly inserted. However, Delcogliano testified that the issue of extraordinary costs has not come up in her experience.

Delcogliano also runs certain programs called alliances. For example, she runs a program with Penguin books which involves bundling appropriate paperback books, published by Penguin, with the Employer's product and selling these items to students and professors as a package, at a discount. With respect to these programs, the associate marketing manager is responsible for ordering the books from the alliance company and maintaining stock.

It does not appear that the current associate marketing manager has specific budgetary responsibilities. Associate marketing managers have in the past commissioned reviews and within guidelines can negotiate an honorarium. Within the guidelines there is some discretion as to how much to pay reviewers. The record does

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<sup>54</sup> The record reflects that Delcogliano's predecessor associate marketing managers were responsible for advertising and other marketing functions for small lists within specific disciplines.

not reflect the budgetary responsibilities of previous associate marketing managers. Nor does the record reflect whether Delcogliano commissions review in her current position.<sup>55</sup>

#### The Positions of the Parties

As a threshold matter, the Employer argues that the petition should be dismissed with respect to the design manager, full service production manager, associate marketing manager, and associate development editor. It contends that these positions were in existence at the time the 1997 collective-bargaining agreement went into effect and, therefore, with respect to those positions, the UC petition is untimely. The Employer acknowledges that the cover design manager and project manager positions were created after agreement on the 1997 contract was reached.

With respect to the issue of timeliness, Petitioner argues that all of the positions were either pre-existing in the unit, or have been renamed positions that perform unit work. Petitioner notes that the January 23, 1997, memorandum sought to remove the positions associate acquisitions editor and associate marketing manager from the unit, which would have been unnecessary had they not been unit positions. As to the associate development editor and full service production manager positions, Petitioner notes that the Board will not preclude the processing of a UC petition where a party was unaware of the existence of the disputed position during bargaining. In the instant case Petitioner asserts, it sought to clarify the unit as soon as it was informed of the existence of the positions.<sup>56</sup>

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<sup>55</sup> The record does reflect she attends all of the marketing meetings attended by marketing managers.

<sup>56</sup> The Employer asserts that the Union either knew of the creation of these positions or should have known. In this connection the Employer notes that the Union had stewards on the job, unit members were promoted into the nonunit positions, and the Employer has a practice of open posting positions.

On the issue of whether the disputed positions should be excluded from the bargaining unit, Petitioner argues, as a general matter, that the recognition clause in the collective-bargaining agreement includes all non-supervisory employees below the level of editor and department head. Further, the Petitioner argues none of the disputed positions are managerial employees as defined by the Board and the courts. Petitioner asserts that managerial employees must be found to formulate or effectuate employer policies or have interests that are more closely aligned with the employer than other employees. Petitioner argues that managerial status is not found merely because the employee exercises a substantial degree of discretion in performing his or her duties. Petitioner argues that the Board looks to whether the employee participates with management in labor relations in order to determine whether the employees' interests are so closely related to management that inclusion in the unit would create a conflict. Noting that none of the disputed positions herein have any labor relations responsibility, Petitioner further argues there is no conflict that would require a finding that the disputed positions are managerial.

With respect to the Employer's claim that the disputed positions are administrative, and therefore excluded from the unit by the collective-bargaining agreement, the Petitioner asserts that the record establishes that the terms "administrative" and "executive", as used in the collective-bargaining agreement are interchangeable with the Board and courts' definition of "managerial". In support of this position, Petitioner points to Krawczyk's testimony that the words executive, administrative and managerial were used by management interchangeably and notes the absence of evidence to the contrary. The Petitioner also cites to a prior UC decision by Region 2, in which Petitioner asserts the Regional Director interpreted the recognition

clause as referring to managerial employees. *Harper & Row Publishers, Inc.*, Case No. 2-UC-141 (1978).<sup>57</sup>

The Employer argues that all of the positions are administrative and therefore expressly excluded from the unit by the collective-bargaining agreement. The Employer dismisses Krawczyk's testimony as not credible. Further, the Employer noted that Krawczyk admitted that she was unaware of the origin of the term "administrative" as used in the contract and argued that Krawczyk's definition of managerial, someone who could create a budget rather than work within it, was so broad that its application would result in no one being excluded from the unit.

In the absence of other evidence as to the intent of the parties, the Employer suggests that the term "administrative" be given the meaning ascribed to it in the Fair Labor Standards Act. Under the Fair Labor Standards Act, the Employer asserts, an employee is considered administrative if he or she spends at least 50% of his or her time on administrative duties. Other factors to be considered are: the relative importance of the employees duties compared to other duties; the frequency with which the employee exercises discretionary powers; the employee's relative freedom from supervision; and the relationship between the employee's salary and the wages paid to other employees for the same kind of exempt work. In support of its position that the disputed positions are administrative under the FLSA, the employer cites several cases, including, *Shaw v.*

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<sup>57</sup> Petitioner argues that the Employer has attempted to bleed the unit by renaming unit positions and removing them from the bargaining unit, when its attempts to do so through the collective bargaining process failed. Specifically, Petitioner contends that positions were renamed as follows:

<u>Unit Position</u>	<u>Renamed Position</u>
Project Editor	Project Manager
Senior Designer	Design Manager
Assistant Marketing Manager	Associate Marketing Manager
Design Coordinator	Cover Design Manager
Associate Editor	Associate Development Editor

*Prentice Hall Computer Publishing, Inc.*, 151 F. 3d 690 (7<sup>th</sup> Cir. 1998) in which the court held that a production editor was an administrative employee.

Alternatively, the Employer argues that the disputed positions are managerial employees as defined by the Board and courts, and therefore not employees within the meaning of Section 2(3) of the Act. Citing *General Dynamics Corp.*, 214 NLRB 851, 857, (1974), the Employer asserts that managerial employees are defined as those who, “formulate and effectuate management policies and making the operative decisions of their employer and those who have discretion in the performance of their jobs independent of the employer’s established policy.” Further, the Employer argues that all of the disputed positions play a role in formulating and effectuating management policies and make operative decisions using considerable discretion and independent judgment.

In its brief the Employer moved for its attorneys fees and costs connected with the processing of this petition. The Employer argues that at a minimum it is entitled to costs and fees with respect to those positions which the Union knew or should have known existed at the time the MOA was agreed upon. With respect to these positions the Employer argues, the unit clarification petition is frivolous and a waste of resources by both the Employer and the Board. Although the Employer has cited no case in which the Board awarded attorney’s fees and costs in connection with a unit clarification petition, it has cited *Sheet Metal Workers International Assn., Local Union 104 (Lux Metals, Inc.)*, 322 NLRB 877 (1997) and *United Steel Workers of America (Doxee Food)*, 281 NLRB 1275 (1986) in which the Board awarded costs and fees in connection with unfair labor practice cases. Having considered this issue, the Employer's motion for reimbursement of attorney's fees and costs is hereby denied.

#### Timeliness of the Petition

The Employer contends that the Board will refuse to clarify a unit in the middle of a contract term, where the objective is to change the composition of a contractually agreed-upon unit by the exclusion or inclusion of employees. A clarification in these circumstances would tend to be disruptive of a bargaining relationship entered into by the parties when they executed the contract. *Edison Sault Electric Co.*, 313 NLRB 753 (1994). However, there are a number of exceptions to this general rule, such as those in which circumstances indicate that there was not full agreement of the parties as to the classifications to be included in the contractual unit. Thus, the Board will process petitions where it is necessary to resolve a dispute the parties have not been able to resolve through collective bargaining. See e.g. *Baltimore Sun Co.*, 296 NLRB 1023 (1989). Another exception to this general rule is where a party was not aware during collective bargaining of the existence of the classification at issue and the position is not clearly excluded from the unit. In *American Television & Communications Corp.*, 279 NLRB 535 (1986), relied upon by the Petitioner, the Board reversed a Regional Director's dismissal of the petition as untimely. In doing so, the Board noted that the employer had created the position during a reorganization, but had not informed the union that it had done so, that the union was unaware of the existence of the position during contract negotiations, there was no discussion of the position during negotiations, and the contract did not specifically exclude the classification at issue. Petitioner argues that the Board's findings in *American Television* are on all fours with the circumstances presented herein.

In the instant matter, it is relevant to the timeliness inquiry that the Employer historically has had a contractual obligation to advise the Union:

in writing of any changes in the content of existing positions, or of the creation of new positions, that may be reasonably deemed to affect their inclusion or exclusion from the bargaining unit. If any existing job descriptions are formally revised, the Employer shall promptly send a copy of the revised job descriptions to the Union. (emphasis supplied).



The Employer does not contest the fact that it failed to advise the Union of the creation of the classifications at issue herein. Rather, it argues that based upon a variety of circumstances, including the length of time such positions had been in existence, the promotion of certain unit personnel into such positions, their consequential disappearance from dues-checkoff lists and the fact that open positions were posted in the facility, it "strains the imagination" for the Union to claim it did not know about the four pre-existing positions prior to the effective date of the 1997 MOA. For the reasons set forth below, I find, in agreement with the Petitioner, that the instant petition is timely filed.

#### Associate Marketing Manager

The Employer contends that the associate marketing manager position has existed since at least November 1996 and has always been a non-unit position. As noted above, there was testimony to the effect that that records relevant to this inquiry exist; however, none were produced at the hearing. Additionally, the evidence demonstrates that in January 1997, in its demand for arbitration the Employer sought to remove this position from the unit, an apparent concession that until that date, it had been a unit position. Inasmuch as the Employer is now apparently refusing to apply the parties' collective-bargaining agreement to employees in this classification, I find that the instant petition is timely filed with respect to this position.

#### Associate Development Editor

The record demonstrates that an associate development editor position has existed, outside the extant bargaining unit, for a number of years both under AWL and its predecessor, Harper Collins. However, the record also establishes that neither Harper Collins or AWL ever provided notice to the Union of the creation of this position, even though its functions are arguably analogous both in structure and function to existing unit positions, in particular those of associate editor and associate acquisitions editor.

Additionally, testimony offered by Petitioner established that in March 1996, the Union asked the Employer for information regarding non-unit positions, and no information as to the creation or existence of this particular position was provided to the Union. In light of the fact that the contractually mandated notice of the creation or existence of this position was not provided in a timely fashion by either Harper Collins or AWL, I find that the instant petition to be timely filed with respect to this classification.

#### Full Service Production Manager

The Employer presented evidence that this position existed, under a different job title, since 1994. However, the evidence additionally establishes that the Employer created the job classification of full service production , in or about September 1996, and that it failed to notify the Union of the establishment of this job title. Moreover, the record additionally establishes that the Union was unaware of the existence of this position until the May 1997 arbitration. Thus, under the circumstances herein, I find that the petition is timely filed with respect to this classification.

#### Design Manager

Although the evidence supports the Employer's contention that the design position existed prior to the execution of the MOA, the record also reflects, and the Employer concedes, that the duties of the design changed pursuant to the 1997 reorganization. During that reorganization a number of individuals occupying the bargaining unit position of senior designer were laid off, as that position was apparently eliminated. Inasmuch as the record establishes that the non-unit position of design was altered during the reorganization, that unit personnel were encouraged to apply for this position, and no timely notice of this was provided to the Union, I find that the petition is timely filed with respect to this position.

#### Managerial Status of Disputed Classifications

The term managerial employee is not defined in the Act. However, the Board, with Supreme Court approval, has long defined managerial employees as those who:

[F]ormulate and effectuate management policies by expressing and making operative the decisions of their employer, and those who have discretion in the performance of their jobs independent of their employer's established policy.

*General Dynamics Corp.*, 213 NLRB 851, 857 (1974); see also *Reading Eagle Co.*, 306 NLRB 871(1992).

Thus, as defined by the Board and the courts, the term managerial employee requires that such individuals affect or control an employer's policies and are aligned with management. *NLRB v. Yeshiva University*, 444 U.S. 672-682-683. See generally, *Bell Aerospace Co., a Division of Textron, Inc.*, 416 U.S. 267 (1974). However, every exercise of discretion by professional or highly skilled employees does not warrant a finding that they are managerial in status. To the contrary, the Supreme Court, in

*Yeshiva*, noted that the Board and lower federal courts:

Have recognized that employees whose decision making is limited to the routine discharge of professional duties in projects to which they have been assigned cannot be excluded from coverage even if union membership arguably may involve some divided loyalty. Only if an employee's activities fall outside the scope of duties routinely performed by similarly situated professionals will he be found aligned with management.

*Id.* At 690.

Thus, the Board considers whether a particular classification of employee exercises independent judgment in taking or recommending discretionary actions that effectively control or implement employer policy. For example, in *Eugene Register Guard*, 237 NLRB 205, 206 (1978), the Board held that district supervisors responsible for dealing with newspaper circulation were managerial where they exercised independent judgment in entering into and canceling contracts committing the Employer to "the number of such persons used and to the compensation they receive." However, the Board has consistently held that where purported managers are not authorized to exercise independent discretion with respect to "significant management policy" they were not managerial employees. In *Washington Post Co.*, 254 NLRB 168, 183 (1981) the Board held that assistant home delivery managers did not sufficiently make use of independent judgement or exercise their own discretion in performing their duties inasmuch as determinations made regarding compensation rates were within guidelines set by upper management. This holding has been extended to situations involving the use of editorial discretion. Thus, in *Washington Post*, *supra*, the Board held that an editor's participation in planning what will appear in the newspaper does not demonstrate managerial status." Choosing stories for placement in the newspaper is not a managerial decision, but rather a journalistic and technical judgment as to the importance of the story to the paper's readers and the manner in which to bring that story to the reader's attention." 254 NLRB at 209 (footnote omitted). See also *The*

*Scranton Tribune*, 294 NLRB 692, 693 (1989), where the Board held "...without more, an editor's authority to check, correct, rewrite or even kill stories and to determine the content and layout of part of the paper does not compel a supervisory finding or demonstrate managerial status. Such duties merely require the exercise of 'news judgment' within the editor's professional journalistic expertise as opposed to any supervisory or managerial authority."

Similarly, limited authority to enter into contractual or financial arrangements with others does not necessarily establish managerial status. Thus, in *Washington Post Co.*, supra, the Board held that the authority to purchase freelance material does not prove managerial status, 254 NLRB at 209. In the same vein, it has been held that district managers who are authorized to enter into contracts with carriers, but have little or no discretion to deviate from established policy are not managerial employees. See *Twin Coast Newspapers, Inc. d/b/a Long Beach Press Telegram*, 305 NLRB 412 (1991). In *Reading Eagle Co.*, 306 NLRB 871 (1992), the Board held that district managers whose duties which included entering into contracts with carriers and determining their routes held not to be managerial where such decisions made within a narrow framework of established company policy and where there was no authority substantially to affect the economic terms of employment of the carriers. Additionally, the exercise of artistic or technical expertise involving discretion or judgement, such as ensuring that color advertisements are properly priced, produced and displayed in a daily newspaper or providing highly skilled technical advice or services does not establish managerial status. See *Bakersfield Californian*, 316 NLRB 1211, 1214-1215(1995).

#### Associate Marketing Manager

The Employer argues that the position of associate marketing manager is managerial, because it is responsible for and uses considerable independent judgment

and discretion in the course of developing the marketing strategies of the company, with all that that entails. The record establishes that Delcogliano, (the only employee currently occupying this title), is responsible for conducting market research and drafting strategies for marketing AWL titles. Although Delcogliano is authorized to enter into agreements with vendors, she operates within an established budget in organizing workshops, and must review significant cost deviations with a marketing manager. Similarly, although she can negotiate the terms of commissioned reviews and honorariums, she operates within budgetary guidelines. While Delcogniano actions may impact upon the financial success of the company, this is due to her exercise of professional knowledge, skill and judgment, and not the formulation of management policy or exercise of discretion in the performance of her job independent of the Employer's established policy. Similarly, her discretion in fiscal matters is circumscribed. Based upon the foregoing, I find the record supports the conclusion that the position of assistant marketing manager is not a managerial position within the meaning ascribed to it by the Board and courts.

#### Associate Development Editor

The Employer contends that associate development editors are similar in function to non-unit development editors, but more junior. Although the record establishes that development editors have historically been non-unit, there were no stipulations or evidence presented as to the issue of whether development editors enjoy managerial status within the Employer's organizational structure, nor am I asked to make such a finding. The record establishes that associate development editors are primarily responsible for manuscript development and content. They also have a coordination function among the editorial, production and marketing personnel involved in any particular project and similarly oversee the production schedule, which requires consultation with authors, other AWL departments and vendors. As regards financial

matters, they advocate for appropriate budget levels for the various projects to which they are assigned and are obliged to operate within the budget awarded. Based upon the foregoing I find that the record does not support the Employer's contention that associate development editors are managerial personnel. They are primarily responsible for coordinating the development, production and content of a publication. These editorial and organizational functions, while obviously requiring discretion, expertise and knowledge of the field are not those that rise to the level of managerial. Additionally, the record reflects that those individuals who occupy the bargaining unit position of associate editor perform many analogous functions, particularly in the area of manuscript development.

#### Full Service Production Manager

The Employer contends that full service production managers are managerial employees because they are responsible for the editing, design and production of various titles being handled through full service vendors. Their responsibilities include creating production schedules, determining production budgets, and quality assurance. The record establishes that the full service production manager coordinates the functions of various outside vendors in producing books and manuscripts, but does not have authority to independently select or enter into agreements with such vendors. Additionally, while they have budgetary, scheduling and quality control responsibilities, they are obliged to operate within parameters established elsewhere. Again, as noted above, it is well settled that such responsibilities, absent more, are the hallmark of a professional, rather than managerial personnel. Based upon the record, I do not find that full service production managers are managerial employees.

#### Design Manager

The Employer contends that the design manager position is a managerial position due to the additional responsibilities assigned pursuant to the 1997

reorganization. These responsibilities include responsibility for the "look" of the book, the assignment of work to free-lance artists and other vendors, as well as the ability to reject such work, determining the art and design portion of the overall plant budget on a project, setting and maintaining schedules for art production and other coordination functions. The Petitioner contends that the design position is substantially same as the bargaining unit senior designer position and should be clarified into the existing unit.

The evidence establishes that design managers do indeed perform many of the design functions which were previously performed by senior designers, particularly as regards the design of the interior and covers of the books. The procedures followed have remained essentially the same. Additionally, the record reflects the fact that these responsibilities comprise a substantial majority of the work of the design . Design managers also have the authority to hire free lancers and negotiate, within budgetary guidelines, their fees. However, the record also establishes that these decisions are reviewed. Design managers also estimate and track budget items, but do not have the authority to set budgets for their projects. Design managers must also monitor deadlines and coordinate with other departments responsible for the production of a title.

Thus, the evidence establishes that, in the performance of their duties, design managers are called to draw upon their technical and artistic skills. The additional duties for which they are responsible are all carried out within the framework of established employer policy. The evidence fails to establish that they are authorized to exercise discretion in the performance of their job independent of such policy. I therefore decline to find that they are managerial employees.

#### Cover Design Manager

In support of its contention that the cover design manager is a managerial employee, the Employer points to various responsibilities such as: determining marketing approaches, setting production schedules, determining which covers should



be designed in-house, hiring and assigning titles to freelance employees and overseeing budgets. However, the record also demonstrates that cover design is controlled by a specification sheet, prepared by the acquisitions editor and the marketing department, and that the particular cover budget of a book is largely controlled by what category of book is duly specified, although the cover design manager has some input with regard to level of funding. It is within such guidelines that the cover design manager is authorized to negotiate with free lancers. Thus, while the record reflects that the cover design manager has large areas of discretion and authority, again such discretion rests largely in artistic and technical areas and does not establish or effectively recommend employer policy. I therefore find that the cover design manager is not a managerial employee.

#### Project Manager

The Employer concedes that the main function of the project manager is to insure the editorial quality of the product. Additionally, the Employer points to the fact that the plant manager meets regularly and confers with managerial personnel, develops and controls plant budgets, and establishes schedules. Additionally, the project manager may hire freelance personnel. In sum, the Employer argues that the project managers responsibilities are similar to those of the full service production manager in that they both are responsible for the overall production of a book, dealing with vendors and monitoring schedules and budgets.

The evidence establishes that the position of project manager was created during the 1997 reorganization and includes those job responsibilities previously assigned to the bargaining unit position of project editor, which was eliminated at that time. However, the additional responsibilities assigned to project managers, particularly in the areas of budget oversight and scheduling, are insufficient to confer managerial status. Project managers largely operate within established guidelines. They are not involved in personnel matters in establishing general operating budgets or formulating or effectively

recommending Employer policy. They largely perform work that previously was assigned to the bargaining-unit. Based upon the foregoing I find the record supports the conclusion that project managers are not managerial personnel.

"Administrative" Status of Disputed Classifications

As the Employer notes, Section 1.1.1 of the parties' collective-bargaining agreement provides that "administrative" employees, along with "executive" and "supervisory" employees, are not included in the unit. The term "administrative" is not otherwise defined in the agreement. The Employer offered no evidence to demonstrate either how this term has been construed or defined over the years or why the disputed classifications should be deemed "administrative." Petitioner offered evidence that, between the years of 1974 and 1984, the term "administrative" was deemed to be synonymous with "managerial."

The Employer urges that, for purposes of the instant analysis, the Board should adopt the construction of the term "administrative" used by the Department of Labor in enforcing the Fair Labor Standards Act. The Employer contends that under such a construction the disputed classifications would be exempt from the coverage of the collective-bargaining agreement. I cannot agree with this contention.

The Board has express authority under Section 9(c)(1) of the Act to issue certifications, and it is axiomatic that it falls to the Board to police such certifications and to clarify them as a means of effectuating the policies of the Act. The statutory language of the Fair Labor Standards Act, however, is designed to effectuate policies totally different from those applicable here. See *Barrantine v. Arkansas-Best Freight System*, 450 U.S. 728, 739 (1981). The Board clearly is not required to follow definitions in the FLSA, a statute designed to protect employees who work overtime, to reach decisions affecting the representational rights of employees. In *Carpenters Local 1976 v. NLRB* (*Sand Door and Plywood Co.*), 357 U.S. 93, 111 (1958), the Supreme Court held that

the Board should not "abandon an independent inquiry into the requirements of its own statute and mechanically accept standards elaborated by another agency under a different statute for wholly different purposes". Thus, based upon the foregoing, I do not find that the record supports the Employer's contention that the disputed classifications are exempt from the bargaining unit by virtue of their status as "administrative" employees.

#### Unit Placement of Disputed Classifications

As noted above, the Employer employs a number of personnel whose job titles do not fall within the defined collective-bargaining unit. Thus, in addition to finding that the above disputed classifications are not excluded from the unit, I must also determine whether they are appropriately included within the unit as set forth in the parties' agreement. For the reasons set forth above and additionally below, I find that it is appropriate to clarify the unit by adding the disputed classifications into the unit.

The Board described the purpose of unit clarification proceedings in *Union Electric Co.*, 217 NLRB 666, 667 (1975):

Unit clarification, as the term itself implies, is appropriate for resolving ambiguities concerning the unit placement of individuals who, for example, come within a newly established classification of disputed unit placement or, within an existing classification which has undergone recent, substantial changes in the duties and responsibilities of the employees in it so as to create a real doubt as to whether the individuals in such classification continue to fall within the category -- excluded or included--that they occupied in the past.

It is clear that a petition for clarification of a bargaining unit will be granted, if the disputed employees are an accretion to the unit. *Printing Industry of Seattle*, 202 NLRB 558 (1973).

As an initial matter, the record establishes that historically the Petitioner has represented all non-managerial and non-supervisory employees in the editorial, production and advertising departments of the Employer's operation. With respect to the

design manager and project manager positions, and as discussed above, the evidence establishes that a substantial component of the duties and responsibilities of these positions were previously assigned to the unit positions of senior designer and project editor, respectively. Inasmuch as the basic core of their job responsibilities consists of what has historically been considered unit work, I find it appropriate to clarify the unit to include these positions. As regards the cover design manager, the record establishes that prior to the creation of this position, in 1997, covers were designed by bargaining unit senior designers and freelancers. The cover design manager now designs covers and oversees the freelancers. Similarly, the full service production manager, a position which the employer concedes is analogous to that of project manager, oversees freelance vendors who perform substantially similar tasks to those performed by unit project editors. Inasmuch as these newly-created positions currently have direct responsibility for what historically has been bargaining-unit work, I find it appropriate to clarify the unit to include such classifications.

The record additionally establishes that the associate marketing manager has historically been deemed a bargaining unit position. Absent any legal or contractual impediment to unit placement, I find it appropriate to clarify the unit to include this position. Finally, with respect to the associate development editor, I note that the unit has historically included associate editors. Based upon the record evidence relating to the job responsibilities of the individual assigned to this classification, I find that there is substantial similarity to unit work to warrant inclusion in the extant bargaining unit.

Accordingly,

IT IS HEREBY ORDERED that the job classifications of associate marketing manager, associate development editor, project manager, design manager, full service

manager, production manager, and cover design manager be, and they hereby are, included in the existing bargaining unit.<sup>58</sup>

Dated: February 1, 2000  
at New York, New York

(s) *Elbert F. Tellem*  
Elbert F. Tellem  
Acting Regional Director, Region 2  
National Labor Relations Board  
26 Federal Plaza, Room 3614  
New York, New York 10278

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<sup>58</sup> Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14<sup>th</sup> Street, NW Washington, DC 20570. This request must be received by **February 15, 2000.**